



**MISSOURI DEPARTMENT OF TRANSPORTATION  
BID GUIDELINES AND DOCUMENTATION  
FOR PURCHASES \$25,000.00 AND OVER**

***THIS IS NOT AN ORDER***

**REQUEST FOR BID**

It is the vendor's responsibility to read and comply with all conditions, specifications, and instructions outlined in this document. This document and any subsequent attachments shall supersede all confirmation forms, receipts, or any other paperwork needed to secure materials, equipment, or services.

TODAY'S DATE: MARCH 13, 2009	<b>BID DUE BY (DATE AND TIME):</b> MARCH 25, 2009 @ 1:00 PM CENTRAL TIME	F.O.B. REQUIREMENTS: DESTINATION (SEE DELIVERY LOCATION(S) BELOW)
CONTRACT PERIOD: APRIL 1, 2009 THROUGH MARCH 31, 2010	<b>BID # D209-073-RM</b> THIS BID # SHOULD BE REFERENCED ON ALL MAILING LABELS, ENVELOPES, AND ANY OTHER CORRESPONDENCE.	BUYER NAME: JUDY M. FRANKE, CPPB SENIOR GENERAL SERVICES SPECIALIST PHONE NUMBER: (660) 385-8269 <b>NO RESPONSES ACCEPTED BY FAX</b>
District Mailing Address: Missouri Department of Transportation – District 2 General Services (Procurement) Division 902 North Missouri Street P.O. Box 8 Macon, MO. 63552		Delivery Location(s): MoDOT WILL PICK UP THE MATERIALS ON AN AS-NEEDED BASIS FROM VARIOUS PLANT LOCATIONS DURING THE CONTRACT PERIOD.

**SCOPE OF WORK**

MoDOT District Two is requesting bids to establish fixed prices to supply **Commercial Hot Mix** for routine pavement repairs. The price per ton shall remain firm (except as provided for herein) from April 1, 2009 through March 31, 2010. Materials will be picked up at various plant locations by MoDOT forces. This bid is for small **routine** projects on an "as needed" basis. For larger projects, when it's advantageous to the taxpayer, MoDOT may request an independent proposal at that time.

The prices entered in the pricing column on Page 2 of this document are considered firm for the contract period listed above, unless one of the following events occur prior to the end of the contract period:

- a.) Vendors may elect to submit revised pricing, due to extreme market fluctuations during the contract period. They may do so by contacting MoDOT District 2 using their business letterhead (either by fax 660-385-1707 or via US Mail) **on or before the last Monday of the month**. This is **extremely important** that this option is monitored closely, so your company does not miss a chance to increase prices as needed. No new pricing will be accepted after the last Monday of the month. The new price will go into effect the first day of the following month (example: new price requested on Monday, April 27<sup>th</sup>, would go into effect on Friday, May 1<sup>st</sup>).
- b.) A "New Plant or Mobile Plant" is established during the middle of the month and/or anytime during the contract period, which allows our maintenance personnel immediate access to your product, then and only then, will a vendor be allowed to establish a price on the spot, instead of waiting for the normal period, which is the last Monday of the month. When this occurs, please contact Buyer of Record, Judy Franke, at (660)-385-8269 to establish a bid price for the plant when it becomes operational.

Vendor selection will be based on cost, availability and distance to the repair site for each job. MoDOT reserves the right to choose a vendor based on availability and project distance to each plant and/or if a plant moves or establishes in a new location during the season.

**VENDOR NAME:**

(Please enter your company name in this block)

## BID PRICING PAGE

Check ALL addresses, phone #'s & plant listings. Mark through existing data to change (or) use Comment's section.

VENDOR	TELEPHONE	PLANT LOCATIONS / PHONE #'s	PRICE/TON	COMMENTS
<b>Vendor Code: 6113201310-6</b> <b>APAC – Missouri, Inc.</b> Attn: Craig Kellmann Sales Representative P.O. Box 1117 Columbia, MO 65205  <u>Remittance Address:</u> APAC, Inc. P.O. Box 504450 St. Louis, MO 63150 * * Changed March 2008	Accounting Dept. Moberly Plant (Kelly) 573-449-0886 573-449-1819 Fax  573-308-2550 Cell ...for inquires about pricing, Graig Kellmann, Sales Representative. <a href="mailto:ckellmann@apac.com">ckellmann@apac.com</a>	Moberly Plant 660-277-3370  Columbia Plant 573-445-1813  Marshall Plant 660-831-0505  <u>Mobile Plants...</u> add as needed	\$  \$  \$  \$	
<b>Vendor Code: 4309959840-1</b> <b>C. B. Asphalt, Inc.</b> Attn: Mike Bross P.O. Box 430 Hannibal, MO 63401  <u>Remittance Address:</u> CB Asphalt Inc. PO Box 66726 St. Louis MO 63166-6726 * * Changed September 2005	573-221-5958 573-221-1892 Fax <a href="mailto:jhamilton@cbrossgroup.com">jhamilton@cbrossgroup.com</a>	Mt. Airy Plant 573-221-5958  <u>Mobile Plants...</u> add as needed	\$  \$	
<b>Vendor Code: 4460002780-0</b> <b>City of Trenton</b> City Hall Attn: Kerry R. Sampson 1100 Main Street Trenton, MO 64683	<u>City Hall</u> 660-359-2013 <u>Street Dept</u> Larry Griffin 660-359-6323 (Barn) 660-359-2373 Fax <a href="mailto:tsd@trentonmo.com">tsd@trentonmo.com</a>	Trenton Plant 660-359-6323  * * Orders from this vendor are contingent upon private plants not being available in the area.	\$	
<b>LaFarge Const. Materials</b> <b>Vendor Code: 5812902260-0</b> P.O. 1232 Sedalia, Mo 65302-1232 660-826-4845 <b>Vendor Code: 5812902260-1</b> PO Box 70654 Chicago, IL 60673	Vendor Code: 5812902260-5 Lafarge North America Inc. Construction Materials PO Box 70617 Chicago, IL 60673-0617 ???	_____ Plant? _____ Plant?	\$ \$	
<b>Vendor Code: 4309877010-0</b> <b>Marshall Paving Co., Inc.</b> Attn: William E. Rieth P.O. Box 297 Marshall, MO 65340-0297	660-886-6854 660-886-6854 Fax <u>NO E-mail</u>	Saline County Plant 660-886-6854	\$	
<b>Vendor Code: 4213938290-1</b> <b>Norris Asphalt Paving Co.</b> Attn: Jim L. Kincart P.O. Box 695 14242 Terminal Avenue Ottumwa, IA 52501	641-682-3427 641-682-7981 Fax <a href="mailto:jimk@norrisasphalt.com">jimk@norrisasphalt.com</a>	Ottumwa, IA. Plant 641-682-5623  <u>Mobile Plants...</u> add as needed	\$  \$	
<b>Vendor Code: 3706366830-0</b> <b>W.L. Miller Company</b> Attn: R. Trent Miller 750 East County RD 1220 Hamilton, IL. 62341	217-847-3316 217-847-3921 Fax <a href="mailto:bruenger@wlmillerco.com">bruenger@wlmillerco.com</a>	Kirksville Plant 660-665-5321 Hamilton, IL. Plant 217-847-6237 <u>Mobile Plants...</u> add as needed	\$ \$ \$	

### **Information and Reports**

The Contractor shall provide all information and reports required by the Regulations, or Directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Missouri Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or Directives. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information the Contractor shall so certify to the Missouri Department of Transportation, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

### **Permits, Licenses and Safety Issues**

The contract price shall include any necessary permits and licenses required by law incidental to the work. Local ordinances requiring building permits are not applicable to state agencies. The Contractor will comply with local laws involving safety in the prosecution of the work.

### **Award**

See **Scope of Work** section for details.

### **Basis of Measurement for Payment**

For truck delivery, the quantities for basis of payment are to be determined as provided in **Section 310.5** of the **2004 Edition of the Missouri Standard Specifications for Highway Construction** and any revisions thereto.

- 1) Measurement will be to the nearest **100 lbs.** for each load when the measurement is by weight.
- 2) Moisture tests will be rounded off to the nearest **0.5 percent** for purposes of computing the deduction for excess moisture (2% moisture allowed).

### **Cancellation of Contract**

If the Contractor/supplier fails to carry out the performance of the work with sufficient workmen and equipment to insure the completion of the delivery within the time specified or becomes insolvent or is adjudicated a bankrupt or commits any act of bankruptcy or insolvency or allows any final judgment to stand against him for a period of ten (10) days, the Missouri Department of Transportation may give notice in writing by registered mail to the Contractor/supplier and the surety of such delay, neglect or default.

If, within ten (10) days after such notice the Contractor/supplier does not proceed to remedy to the satisfaction of the Department's representatives the faults specified in said notice, or the surety does not proceed to take over the deliveries, the Department shall have full power and authority, without impairing the obligation of the Contractor/supplier under the contract or the surety under the bond, to take over the completion of the work and arrange for the shipment of any materials necessary to complete the work and the Contractor/supplier and the surety will be responsible for any additional costs incurred by the Department in obtaining the completion of the deliveries.

### **F.O.B.**

All materials bid are F.O.B. Destination (as outlined above). Freight costs must be included in the unit price bid and not listed as a separate line item.

### **Certificate of Good Standing**

The Bidder must be in compliance with the laws regarding conducting business in the State of Missouri. Within ten (10) business days of notification, the Bidder will need to provide a copy of his/her Missouri Secretary of State's "Certificate of Good Standing" prior to the issuance of any contract or initial purchase order by the Missouri Department of Transportation (MoDOT). MoDOT reserves the right, at its sole discretion, to extend the date this documentation must be provided. The Bidder's inability to provide this documentation will result in his/her bid being rejected.

### **RsMO 34.040.6 Compliance**

The Bidder must be in compliance with the laws regarding conducting business in the State of Missouri. The Bidder should ensure they are in good standing with the Missouri Department of Revenue. Prior to award MoDOT staff will check with the Missouri Department of Revenue to ensure compliance with the provisions of RsMO 34.040.6. If necessary a "Certificate of No Tax Due" may be requested of the successful Bidder. If such a certificate is requested, the Bidder's inability to provide this documentation will result in his/her bid being rejected.

## MISSOURI DOMESTIC PRODUCTS PROCUREMENT ACT

The bidder's attention is directed to the Missouri Domestic Products Procurement Act, Sections 34.350 to 34/359, RsMO, which requires all manufactured goods or commodities used or supplied in the performance of this contract or any subcontract to be manufactured or produced in the United States.

Section 34.355, RsMO, requires the vendor or contractor to certify his compliance with Section 34.353 and, if applicable, Section 34.359, RsMO, at the time of bidding **and** prior to payment. Failure to comply with Section 34.353, RsMO, during the performance of the contract **and** to provide certification of compliance prior to payment will result in nonpayment for those goods or commodities.

Section 34.353.2, RsMO, specifies that it does not apply where the total contract is less than Twenty-Five Thousand Dollars (\$25,000.00). If your total bid is Twenty-Five Thousand Dollars (\$25,000.00) or more, you **must** complete this form as directed below.

**Failure to complete and return this document with this bid will cause the State to presume the manufactured goods or products listed in the bid are not manufactured or produced in the United States, and the bid will be evaluated on that basis. Please read the certification appearing below on this form.**

- [ ] If all the goods or products specified in the attached bid which the bidder proposes to supply to the State shall be manufactured or produced in the "United States" as defined in Section 34.350, RsMO, check the box at left.
- [ ] If only one item of any particular goods or products specified in the attached bid is manufactured or produced in the "United States" as defined in Section 34.350, RsMO, check the box at left and list the items (or item number) here:  
\_\_\_\_\_  
\_\_\_\_\_
- [ ] If any or all of the goods or products specified in the attached bid which the bidder proposes to supply to the State are **not** manufactured or produced in the "United States" as defined in Section 34.350, RsMO, then: (a) check the box at left; (b) list below, by item (or item number), the country other than the United States where each good or product is manufactured or produced; and (c) check the boxes to the left of the paragraphs below if applicable and list the corresponding items (or item numbers) in the spaces provided.

Item (or item number)	Location Where Item Manufactured or Produced

(attach an additional sheet if necessary)

- [ ] The following specified goods or products cannot be manufactured or produced in the United States in sufficient quantities or in time to meet the contract specifications. Items (or item numbers): \_\_\_\_\_  
\_\_\_\_\_
- [ ] The following specified goods or products must be treated as manufactured or produced in the United States, in accordance with an existing treaty, law, agreement, or regulation of the United States, including a treaty between the United States and any foreign country regarding export-import restrictions or international trade. Items (or item numbers): \_\_\_\_\_  
\_\_\_\_\_

### CERTIFICATION

**By submitting this document, completed as directed above, with a bid, the bidder certifies under penalty of making false declaration (Section 575.060, RsMO) that the information contained in this document is true, correct and complete, and may be relied upon by the State in determining the bidders qualifications under and in compliance with the Missouri Domestic Products Procurement Act.**

**The bidder's failure to complete and return this document with the bid as directed above will cause the State to presume the manufactured goods or products listed in the bid are not manufactured or produced in the United States, and the bid will be evaluated on that basis pursuant to Section 34.353.3(2), RsMO.**

# PREFERENCE IN PURCHASING PRODUCTS

DATE: \_\_\_\_\_

The bidders attention is directed to Section 34.076 RsMO 1986 which gives preference to Missouri corporations, firms, and individuals when letting contracts or purchasing products.

Bids/Quotations received will be evaluated on the basis of this legislation.

**All vendors submitting a bid/quotation must furnish ALL information requested below.**

## FOR CORPORATIONS:

State in which incorporated: \_\_\_\_\_

## FOR OTHERS:

State of domicile: \_\_\_\_\_

## FOR ALL VENDORS:

List address of Missouri offices or places of business:

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## THIS SECTION MUST BE COMPLETED AND SIGNED:

**FIRM NAME:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

**CITY:** \_\_\_\_\_ **STATE:** \_\_\_\_\_ **ZIP:** \_\_\_\_\_

**BY (signature required):** \_\_\_\_\_

**Federal Tax I.D. #:** \_\_\_\_\_ **if no Federal Tax I.D. # - list Social Security #:** \_\_\_\_\_

NOTE: For bid/quotation to be considered, the "Preference in Purchasing Products" form must be on file in the General Services (Procurement) Division and must be dated in the current calendar year.

## VENDOR NOTES

VENDORS MAY ALSO ATTACH OTHER PERTINENT OR SUPPORTING DATA WITH THEIR RESPONSE TO THIS RFB.

**Missouri Department of Transportation purchase orders must be issued to the invoicing company/address. If the invoicing company/address will be different from that listed in the vendor information section (below), the vendor should specify the “remit to” company/address in the vendor notes section (above).**

## VENDOR INFORMATION

Vendor Name/Mailing Address:	Vendor Contact Information (including area codes):						
	Phone #:						
	Cellular #:						
Email Address:	Fax #:						
Printed Name and Title of Responsible Officer or Employee:	Signature:						
<p>Is your company registered/certified with the State of Missouri as a (please circle):</p> <table style="width: 100%; margin-left: 200px;"> <tr> <td style="text-align: right;">MINORITY BUSINESS ENTERPRISE (MBE) ?</td> <td style="text-align: center;">YES</td> <td style="text-align: center;">NO</td> </tr> <tr> <td style="text-align: right;">WOMEN BUSINESS ENTERPRISE (WBE) ?</td> <td style="text-align: center;">YES</td> <td style="text-align: center;">NO</td> </tr> </table> <p>If you would like information about MBE/WBE certification, please contact the Officer of Supplier of Workforce Diversity by calling 1-877-259-2963 or visit the following internet address: <a href="http://www.oswd.mo.gov">http://www.oswd.mo.gov</a></p>		MINORITY BUSINESS ENTERPRISE (MBE) ?	YES	NO	WOMEN BUSINESS ENTERPRISE (WBE) ?	YES	NO
MINORITY BUSINESS ENTERPRISE (MBE) ?	YES	NO					
WOMEN BUSINESS ENTERPRISE (WBE) ?	YES	NO					
<p>Is your company a MISSOURI SERVICE-DISABLED VETERAN BUSINESS? <span style="float: right;">YES      NO</span></p> <p>A service-disabled veteran is defined as any individual who is disabled as certified by the appropriate federal agency responsible for the administration of veteran's affairs. A service-disabled veteran business is defined as a business concern:</p> <ul style="list-style-type: none"> <li>not less than fifty-one (51) percent of which is owned by one or more service-disabled veterans or, in the case of publicly owned businesses, not less than fifty-one (51) percent of the stock of which is owned by one or more service-disabled veterans; and</li> <li>the management and daily business operations of which are controlled by one or more service-disabled veterans.</li> </ul>							

**All responses to this Request For Bid should be submitted on this form and should be returned to the Buyer listed above at the District mailing address shown. Bids should be mailed or hand-delivered. Responses by fax cannot be accepted or considered for award.**

**Note: If any of the “Standard Solicitation Provisions” and “General Terms and Conditions” on the following pages conflict with the requirements outlined in this Request For Bid, the RFB requirements will supersede those below.**

## **STANDARD SOLICITATION PROVISIONS**

- a. The Missouri Department of Transportation (MoDOT) reserves the right to reject any or all bids/quotes/proposals, and to accept or reject any items thereon, and to waive technicalities. In case of error in the extension of prices in the bid/quote/proposal, unit prices will govern.
- b. All bids/quotes/proposals must be signed with the firm name and by a responsible officer or employee. Obligations assumed by such signature must be fulfilled.
- c. By virtue of statutory authority, a preference will be given to materials, products, supplies, provisions and all other articles produced, manufactured, made or grown, within the State of Missouri.
- d. Time of delivery is a part of the consideration and, if not otherwise stated in the solicitation documents, must be stated in definite terms by the Bidder/Offeror and must be adhered to. If time varies on different items, the Bidder/Offeror shall so state.
- e. If providing bids/quotes/proposals for commodities, the Bidder/Offeror will state brand or make on each item. If bidding or proposing other than the make, model or brand specified, the manufacturer's name, model number or catalog number must be given.
- f. **For bids/proposals of \$25,000 or more**, no bids/proposals by telephone, telegram or telefax will be accepted.
- g. The date specified for the returning of bids/quotes/proposals is a firm deadline and all bids/quotes/proposals must be received at the designated office by that time. The Department does not recognize the U.S. Mail, Railway Express Agency, Air Express, or any other organization, as its agent for purposes of accepting proposals. All proposals arriving at the designated office after the deadline specified will be rejected.

## **GENERAL TERMS AND CONDITIONS**

### **General Performance**

- a. This work is to be performed under the general supervision and direction of the Missouri Department of Transportation (MoDOT) and, if awarded any portion of the work, the Contractor agrees to furnish at his own expense all labor and equipment required to complete the work, it being expressly understood that this solicitation is for completed work based upon the price(s) specified and is not a solicitation for rental of equipment or employment of labor by MoDOT, and MoDOT is to have no direction or control over the employees used by the Contractor in performance of the work.

### **Deliveries**

- a. Unless otherwise specified on the solicitation documents or purchase order, suppliers shall give at least 24 hours advance notice of each delivery. Delivery will only be received between the hours of 8:00 a.m. to 3:00 p.m., Monday through Friday. Material arriving after 3:00 p.m. will not be unloaded until the following workday. No material will be received on Saturday, Sunday or state holidays.
- b. If the prices bid herein include the delivery cost of the material, the Contractor agrees to pay all transportation charges on the material as FOB - Destination. Freight costs must be included in the unit price bid and not listed as a separate line item.
- c. Any demurrage is to be paid by the Contractor direct to the railroad or carrier.

### **Nondiscrimination**

- a. The Contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- b. All solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of the Contractor's obligations under this contract and the Regulations, will be relative to nondiscrimination on the grounds of race, color, or national origin.
  - 1) Sanctions for Noncompliance: In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, MoDOT shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
    - i. withholding of payments to the Contractor under the contract until the Contractor complies, and/or,
    - ii. cancellation, termination or suspension of the contract, in whole or in part.

### **Contract/Purchase Order**

- a. By submitting a bid/quote/proposal, the Bidder/Offeror agrees to furnish any and all equipment, supplies and/or services specified in the solicitation documents, at the prices quoted, pursuant to all requirements and specifications contained therein.
- b. A binding contract shall consist of: (1) the solicitation documents, amendments thereto, and/or Best and Final Offer (BAFO) request(s) with any changes/additions, (2) the Contractor's proposal and/or submitted pricing, and (3) the MHTC's acceptance of the proposal and/or bid by purchase order or post-award contract.

- c. A notice of award does not constitute an authorization for shipment of equipment or supplies or a directive to proceed with services. Before providing equipment, supplies and/or services, the Contractor must receive a properly authorized purchase order and/or notice to proceed.
- d. The contract expresses the complete agreement of the parties and performance shall be governed solely by the specifications and requirements contained therein. Any change, whether by modification and/or supplementation, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representative of the Contractor and the duly authorized representative of the MHTC, by a modified purchase order prior to the effective date of such modification. The Contractor expressly and explicitly understands and agrees that no other method and/or no other document, including correspondence, acts, and oral communications by or from any person, shall be used or construed as an amendment or modification.

### **Subcontracting**

- a. It is specifically understood that no portion of the material or any interest in the contract, shall be subcontracted, transferred, assigned or otherwise disposed of, except with the written consent of MoDOT. Request for permission to subcontract or otherwise dispose of any part of the work shall be in writing to MoDOT and accompanied by documentation showing that the organization which will perform the work is particularly experienced and equipped for such work.
- b. Consent to subcontract or otherwise dispose of any portion of the work shall not be construed to relieve the Contractor of any responsibility for the production and delivery of the contracted work and the completion of the work within the specified time.
- c. All payments for work performed by a subcontractor shall be made to the Contractor to whom the contract was awarded and the purchase order issued.

### **Invoicing and Payment**

- a. MoDOT is exempt from paying Missouri Sales Tax, Missouri Use Tax and Federal Excise Tax. However, the Contractor may themselves be responsible for the payment of taxes on materials they purchase to fulfill the contract. A Project Tax Exemption Certificate will be furnished to the successful Bidder/Offeror upon request if applicable.
- b. Each invoice should be itemized in accordance with items listed on the purchase order and/or contract. The statewide financial management system has been designed to capture certain receipt and payment information. Therefore, each invoice submitted must reference the purchase order number and must be itemized in accordance with items listed on the purchase order. Failure to comply with this requirement may delay processing of invoices for payment.
- c. Unless otherwise provided for in the solicitation documents, payment for all equipment, supplies, and/or services required herein shall be made in arrears. The Missouri Highways and Transportation Commission (MHTC) shall not make any advance deposits.
- d. The MHTC assumes no obligation for equipment, supplies, and/or services shipped or provided in excess of the quantity ordered. Any authorized quantity is subject to the MHTC's rejection and shall be returned at the Contractor's expense.
- e. The MHTC reserves the right to purchase goods and services using the state-purchasing card.

### **Applicable Laws and Regulations**

- a. The contract shall be construed according to the laws of the State of Missouri. The Contractor shall comply with all local, state, and federal laws and regulations related to the performance of the contract.
- b. The Contractor must be registered and maintain good standing with the Secretary of State of the State of Missouri and other regulatory agencies, as may be required by law or regulations. Prior to the issuance of a purchase order and/or notice to proceed, the Contractor may be required to submit to MoDOT a copy of their current Authority Certificate from the Secretary of State of the State of Missouri.
  - 1) Prior to the issuance of a purchase order and/or notice to proceed, all **out-of-state** Contractors **providing services** within the state of Missouri must submit to MoDOT a copy of their current Transient Employer Certificate from the Department of Revenue, in addition to a copy of their current Authority Certificate from the Secretary of State of the State of Missouri.
- c. The exclusive venue for any legal proceeding relating to or arising, out of the contract shall be in the Circuit Court of Cole County, Missouri.
- d. Pursuant to RSMo 285.530 (1), no business entity or employer shall knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the state of Missouri. As a condition for the award of any contract or grant in excess of five thousand dollars by the state or by any political subdivision of the state to a business entity, or for any business entity receiving a state-administered or subsidized tax credit, tax abatement, or loan from the state, the business entity shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services. Every such business entity shall sign an affidavit affirming that it does not knowingly employ any person who is unauthorized alien in connection with the contracted services. [RSMo 285.530 (2)] A copy of the affidavit referenced above is provided within this document.



## Executive Order

- a. The Contractor shall comply with all the provisions of Executive Order 07-13, issued by the Honorable Matt Blunt, Governor of Missouri, on the sixth (6<sup>th</sup>) day of March, 2007. This Executive Order, which promulgates the State of Missouri's position to not tolerate persons who contract with the state engaging in or supporting illegal activities of employing individuals who are not eligible to work in the United States, is incorporated herein by reference and made a part of this Agreement.
  - 1) "By signing this Agreement, the Contractor hereby certifies that any employee of the Contractor assigned to perform services under the contract is eligible and authorized to work in the United States in compliance with federal law."
  - 2) In the event the Contractor fails to comply with the provisions of the Executive Order 07-13, or in the event the Commission has reasonable cause to believe that the contractor has knowingly employed individuals who are not eligible to work in the United States in violation of federal law, the Commission reserves the right to impose such contract sanctions as it may determine to be appropriate, including but not limited to contract cancellation, termination or suspension in whole or in part or both.
  - 3) The Contractor shall include the provisions of this paragraph in every subcontract. The Contractor shall take such action with respect to any subcontract as the Commission may direct as a means of enforcing such provisions, including sanctions for noncompliance.

## Preferences

- a. In the evaluation of bids/quotes/proposals, preferences shall be applied in accordance with Chapter 34 RSMo. Contractors should apply the same preferences in selecting subcontractors.
- b. By virtue of statutory authority, RSMo. 34.076 and 34.350 to 34.359, a preference will be given to materials, products, supplies, provisions and all other articles produced, manufactured, made or grown within the State of Missouri. Such preference shall be given when quality is equal or better and delivered price is the same or less.
  - 1) If attached, the document entitled "**PREFERENCE IN PURCHASING PRODUCTS**" should be completed and returned with the solicitation documents.
  - 2) If attached, the document entitled "**MISSOURI DOMESTIC PRODUCTS PROCUREMENT ACT**" should be completed and returned with the solicitation documents. **Applies if bid is Twenty-Five Thousand Dollars (\$25,000.00) or more.**
- c. By virtue of statutory authority, RSMo 34.074, a preference will be given all contracts for the performance of any job or service to service-disabled veteran business either doing business as Missouri firms, corporations, or individuals; or which maintain Missouri offices or places of business, when the quality of performance promised is equal or better and the price quoted is the same or less or whenever competing bids, in their entirety, are comparable.
  - 1) If attached, the document entitled "**MISSOURI SERVICE-DISABLED VETERAN PREFERENCE**" should be completed and returned with the solicitation documents.
- d. In the event of a tie of low bids, the MHTC reserves the right to establish the method to be used in determining the award

## Remedies and Rights

- a. No provision in the contract shall be construed, expressly or implied, as a waiver by the MHTC of any existing or future right and/or remedy available by law in the event of any claim by the MHTC of the Contractor's default or breach of contract.
- b. The Contractor agrees and understands that the contract shall constitute an assignment by the Contractor to the MHTC of all rights, title and interest in and to all causes of action that the Contractor may have under the antitrust laws of the United States or State of Missouri for which causes of action have accrued or will accrue as the result of or in relation to the particular equipment, supplies, and/or services purchased or produced by the Contractor in the fulfillment of the contract with the MHTC.
- c. In the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request MoDOT to enter into such litigation to protect the interests of the MHTC, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

## Cancellation of Contract

- a. The MHTC may cancel the contract at any time for a material breach of contractual obligations or for convenience by providing the Contractor with written notice of cancellation. Should the MHTC exercise its right to cancel the contract for such reasons, cancellation will become effective upon the date specified in the notice of cancellation sent to the Contractor.
- b. If the MHTC cancels the contract for breach, the MHTC reserves the right to obtain the equipment, supplies, and/or services to be provided pursuant to the contract from other sources and upon such terms and in such manner as the MHTC deems appropriate and charge the Contractor for any additional costs incurred thereby.

### **Bankruptcy or Insolvency**

- a. Upon filing for any bankruptcy or insolvency proceeding by or against the Contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assigned the benefit or creditors, the Contractor must notify MoDOT immediately. Upon learning of any such actions, the MHTC reserves the right, at its sole discretion, to either cancel the contract or affirm the contract and hold the Contractor responsible for damages.

### **Inventions, Patents, and Copyrights**

- a. The Contractor shall defend, protect, and hold harmless the MHTC, its officers, agents, and employees against all suits of law or in equity resulting from patent and copyright infringement concerning the Contractor's performance or products produced under the terms of the contract.

### **Inspection and Acceptance**

- a. No equipment, supplies, and/or services received by MoDOT pursuant to a contract shall be deemed accepted until MoDOT has had reasonable opportunity to inspect said equipment, supplies, and/or services.
- b. All equipment, supplies, and/or services which do not comply with the specifications and/or requirements or which are otherwise unacceptable or defective may be rejected. In addition, all equipment, supplies, and/or services which are discovered to be defective or which do not conform to any warranty of the Contractor upon inspection (or at any later time if the defects contained were not reasonably ascertainable upon the initial inspection) may be rejected.
- c. The MHTC reserves the right to return any such rejected shipment at the Contractor's expense for full credit or replacement and to specify a reasonable date by which replacements must be received.
- d. The MHTC's right to reject any unacceptable equipment, supplies, and/or services shall not exclude any other legal, equitable or contractual remedies the MHTC may have.

### **Warranty**

- a. The Contractor expressly warrants that all equipment, supplies, and/or services provided shall: (1) conform to each and every specification, drawing, sample or other description which was furnished to or adopted by MoDOT, (2) be fit and sufficient for the purpose expressed in the solicitation documents, (3) be merchantable, (4) be of good materials and workmanship, and (5) be free from defect.
- b. Such warranty shall survive delivery and shall not be deemed waived either by reason of the MHTC's acceptance of or payment for said equipment, supplies, and/or services.

### **Status of Independent Contractor**

- a. The Contractor represents itself to be an independent Contractor offering such services to the general public and shall not represent itself or its employees to be an employee of the MHTC. Therefore, the Contractor shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, workers' compensation, employee insurance, minimum wage requirements, overtime, etc., and agrees to indemnify, save and hold the MHTC, its officers, agents and employees harmless from and against any and all losses (including attorney fees) and damage of any kind related to such matters.

### **Indemnification**

- a. The Offeror shall defend, indemnify and hold harmless the Commission, including its members and department employees, from any claim or liability whether based on a claim for damages to real or personal property or to a person for any matter relating to or arising out of the Offeror's performance of its obligations under this Agreement.

(T&C's Version 1/21/09)

**IF NOT SUBMITTING A BID, PLEASE COMPLETE AND RETURN THE FOLLOWING “NO BID FORM” TO ASSIST THE PROCUREMENT STAFF IN OUR PROCESS EVALUATIONS.**

# THANK YOU

**NO BID**

DATE: \_\_\_\_\_

TO: Missouri Department of Transportation – District 2  
General Services (Procurement) Division  
902 North Missouri Street P.O. Box 8  
Macon, MO. 63552  
(660)-385-1707 – fax #

FROM: \_\_\_\_\_ (Company Name)

\_\_\_\_\_ (Mailing Address)

\_\_\_\_\_  
(City, State, Zip Code)

\_\_\_\_ (Office Phone #)

\_\_\_\_ (Cellular Phone #)

\_\_\_\_ (Fax #)

Our company is submitting “NO BID” on RFB # \_\_\_\_\_ for the reason(s) indicated below:

- ( ) Product or service is not available or cannot meet the required specifications
- ( ) Other obligations – cannot make required deadline
- ( ) The delivery point or work location is outside of our territory or coverage/service area
- ( ) Other – Please explain below:

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Contact Person: \_\_\_\_\_ Email Address: \_\_\_\_\_

- ( ) Please keep our name on the bidder's list for future opportunities on this product or service.  
( ) Please remove our name from your bidder's list for this product or service.

FAILURE TO RETURN A BID OR THIS FORM MAY RESULT IN  
REMOVAL FROM OUR VENDOR DATABASE FOR FUTURE OPPORTUNITIES